

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

NOWAK DENTAL SUPPLIES, INC.,

Plaintiff,

V.

DENTSPLY INTERNATIONAL INC.,

Defendant.

No. 1:07-cv-01799

(Judge Conner)

**DEFENDANT DENTSPLY INTERNATIONAL INC.'S
MOTION TO TRANSFER VENUE**

Defendant Dentsply International Inc. (“Dentsply”) respectfully moves to transfer this action to the United States District Court for the District of Delaware pursuant to 28 U.S.C. § 1404(a) (2007). The grounds for this motion are as follows:

1. A district court may transfer any civil action to any other district or division “where it might have been brought” “[f]or the convenience of parties and witnesses” and “in the interest of justice.” 28 U.S.C. § 1404(a).

2. Nowak could have filed its complaint in the District of Delaware. The District of Delaware has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337 and 15 U.S.C. §§ 2, 15. Furthermore, venue is proper in the District of Delaware under 15 U.S.C. § 22 and 28 U.S.C. § 1391 (b), (c) because Dentsply is a Delaware corporation.

3. The interests of justice favor transfer to the District of Delaware because Chief Judge Sue L. Robinson has already adjudicated the facts and legal issues involved in this lawsuit in related cases. From May 2000 to April 2006 Judge Robinson presided over the underlying government litigation against Dentsply, *United States v. Dentsply Int'l, Inc.*, 277 F. Supp. 2d 387 (D. Del. 2003), that challenged the same conduct that Nowak challenges here. Judge Robinson has also presided over multiple tag-along putative class action cases against Dentsply for almost eight years, two of which are still active.

4. In one of these related cases, *Hess v. Dentsply*, Judge Robinson recently held that the Third Circuit's opinion in the underlying government litigation did not collaterally estop Dentsply from contesting whether the plaintiff dental labs (Nowak's customers) had suffered injury from Dentsply's exclusive dealing policy. Judge Robinson held that plaintiffs were not entitled to collateral estoppel because antitrust injury was not litigated in the government action.

Nowak also has argued that the Third Circuit's opinion decided whether the dealers were injured by Dentsply's policy. Transferring this action to Delaware will thus reduce the possibility of inconsistent rulings and will avoid duplicative litigation by ensuring that the same judge presides over all current tag-along purchaser actions against Dentsply.

5. Finally, the District of Delaware is, on balance, a more convenient forum for the parties and witnesses.

For the foregoing reasons, the District of Delaware is the best possible forum to litigate this case and the Court should transfer this action to the United States District Court for the District of Delaware.

In support of its motion, Dentsply relies on the accompanying Brief in Support.

Dated: December 7, 2007

Respectfully submitted,

Of Counsel:

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Attorneys for Defendant,
DENTSPLY INTERNATIONAL INC.

CERTIFICATE OF NON-CONCURRENCE

Defendant, by and through its counsel, hereby certifies that Nowak's counsel does not concur with Defendant's Motion to Transfer Venue.

/s/ Harvey Freedenberg
Harvey Freedenberg

Dated: December 7, 2007

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing document was served this 7th day of December 2007 via electronic means upon counsel via the ECF filing system.

/s/ Harvey Freedenberg

Harvey Freedenberg

Of Counsel for Defendant

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ORDER OF COURT

AND NOW, this _____ day of _____, 200_, upon consideration of Defendant Dentsply International Inc.'s Motion to Transfer Venue and Brief in Support thereof,

IT IS ORDERED THAT Defendant's Motion is GRANTED. The Clerk of Court is hereby directed to transfer this action to the United States District Court for the District of Delaware pursuant to 28 U.S.C. § 1404(a) .

Christopher C. Conner
United States District Judge